

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202

December 8, 2003

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

IN RE: TARIFF TO ESTABLISH WELCOMING REWARDS PROMOTION -- Tariff
Number: 20031366. DOCKET NO. 03-00625

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's Complaint and Petition To Intervene in regards to Docket No. 03-00625. Kindly file same in this docket. Copies are being sent to all parties of record. If you have any questions, kindly contact me at (615) 532-2590. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Joe Shirley".
JOE SHIRLEY

Assistant Attorney General

cc: All Parties of Record

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: BELL SOUTH
TELECOMMUNICATIONS, INC.'S
TARIFF TO ESTABLISH
WELCOMING REWARD PROMOTION
(TARIFF NO. 03-1366)**

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DOCKET NO. 03-00625

COMPLAINT AND PETITION TO INTERVENE

Comes now Paul G. Summers, the Attorney General and Reporter, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter "Attorney General" or "Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118(c)(2)(A) and respectfully complains against the above-captioned tariff and petitions the Tennessee Regulatory Authority ("TRA") to convene a contested case proceeding and grant the Consumer Advocate's intervention in this docket on behalf of the public interest since consumers may be adversely affected by actions taken in this docket. The Consumer Advocate petitions as follows:

1. The Consumer Advocate has a duty and the authority under Tenn. Code Ann. § 65-4-118(c)(2)(A) to represent the interests of Tennessee consumers of public utilities services by initiating, intervening, and participating before the TRA in accordance with the Uniform Administrative Procedures Act ("UAPA").

2. BellSouth Telecommunications, Inc. ("BellSouth") is an incumbent local exchange carrier operating in the State of Tennessee, regulated by the TRA, and offering telecommunications services to Tennessee consumers.

3. BellSouth's principal offices are located at 333 Commerce Street, Nashville,

Tennessee 37201-3300.

4. On December 3, 2003, BellSouth filed a tariff entitled the “BellSouth Welcoming Rewards Promotion” (the “Tariff”) seeking approval to offer a \$75 per new line/per reward for certain business customers who subscribe to business basic local service or its equivalents. To qualify for the bonus, the customer must meet certain terms and conditions, including the following: (1) the customer must be a “new BellSouth business customer”; (2) the customer must be located in BellSouth’s Rate Group 5 service area (i.e., the Memphis, or Nashville metropolitan area calling (MAC) region); (3) the customer must have aggregate annual billing, per state of BellSouth service, not exceeding \$36,000 at the time of enrollment; (4) the customer must sign a 12-month term service contract on or between the dates of January 2, 2004 and June 30, 2004; and (5) the customer must agree to pay termination liability charges should the customer terminate the service contract prior to its expiration. The Tariff further provides that the program is available for resale for the duration of the enrollment period.

5. Pursuant to 47 U.S.C. §§ 251(b)(1) and 251(c)(4) and related rules and orders of the Federal Communications Commission (“FCC”) and the TRA, BellSouth, as an incumbent local exchange carrier, has the duties: (a) to resale at established wholesale rates any retail telecommunications services that it provides to customers who are not telecommunications carriers; and (b) to avoid imposing unreasonable or discriminatory conditions or limitations on the resale of telecommunications services.

6. Although the Tariff on its face provides that the program offered therein is available for resale, practical application of the Tariff precludes competing carriers from reselling the program to many potential customers who are not appropriately classified as “new business customers” under

the terms of the Tariff. Moreover, in those limited situations where competing carriers may qualify to resell the Tariff, it is unclear from the face of the Tariff if service will be resold at the wholesale discount rates established by the TRA. Such restrictions on resale of the Tariff are presumptively unreasonable under federal law, and could constitute a breach of BellSouth's resale duties and obligations that are identified in Paragraph 5, *supra*.

7. The Tariff discriminates between "new business customers" as defined in the Tariff (including former BellSouth customers who return their service to BellSouth and customers who seek service from BellSouth for the first time), and other business customers (including currently existing customers who have never terminated service and customers who subscribe to service outside the enrollment period). "New business customers" will pay a lower rate via rewards than other business customers pay for the same service in the same serving area. On its face, the only difference between "new business customers" and other business customers is the timing for selection of service created by the Tariff. Based on available information and belief, such temporal differences among customers are not recognized as sufficient justification to offer different rates to customers who are otherwise similarly situated. The Tariff therefore, on its face, constitutes unjust discrimination among business customers in violation of Tenn. Code Ann. §§ 65-4-122 and 65-5-204(a).

8. Operation of the Tariff presents several concerns with respect to BellSouth's competitive behavior. The Tariff unreasonably discriminates against competing carriers because the Tariff realistically cannot be resold to a large segment of potential customers — i.e., customers that are not classified as "new business customers" per the Tariff — even though BellSouth would collect the same amount from competitors notwithstanding the classification of the competitor's end-

user customer. In addition, the Tariff is anticompetitive because it could prevent customers from choosing a competitor of BellSouth during the entire length of the customer's contract, not just during the Tariff's promotional period. See Order Denying Tariff, TRA Docket No. 99-00936 (Nov. 7, 2000). BellSouth has an economic incentive to favor its retail operation over competing carriers. Through application of the Tariff, BellSouth can exploit its role as the wholesale provider of telecommunications services, and its favorable market position and power, to gain advantages for its retail operation to the detriment of competing carriers. If pursued, such activities on the part of BellSouth would rise to the level of unjust or anti-competitive practices in violation of Tenn. Code Ann. §§ 65-5-208(c), 65-4-123, 65-4-115, 65-4-122, and 65-5-204(a).

9. The TRA therefore should not approve the Tariff.


10. Both federal and state policymakers have proclaimed that consumers will benefit from the development of competition in telecommunications markets. *See Preamble*, Telecommunications Act of 1996; Tenn. Code Ann. § 65-4-123. If a contested case is convened, the proceeding will involve issues concerning the development of competition in Tennessee's telecommunications markets.


11. Only by initiating, intervening, and participating in this proceeding can the Consumer Advocate accomplish the purposes set forth by the General Assembly to represent and protect the interests of Tennessee consumers in matters involving public utility services.

WHEREFORE, the Consumer Advocate prays that the TRA will convene a contested case proceeding and grant its Complaint and Petition to Intervene and grant such other relief as may be deemed appropriate under the law.

RESPECTFULLY SUBMITTED,

PAUL G. SUMMERS, B.P.R. #6285
Tennessee Attorney General


ANDY D. BENNETT, B.P.R. #009894
Chief Deputy Attorney General

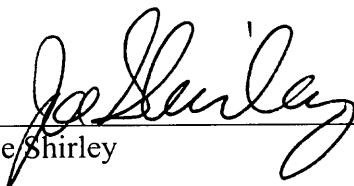

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Consumer Advocate and Protection Division
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(615) 532-2590

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complaint and Petition to Intervene was served on parties below via facsimile and U.S. Mail, postage prepaid, on the 8th day of December, 2003.

Guy M. Hicks, Esquire
General Counsel
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300

Henry Walker, Esquire
Boult, Cummings, Conners & Berry, PLC
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P.O. Box 198062
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Joe Shirley

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